

Sonya Trucking, Inc. d/b/a Sonya Trucking Company and United Mine Workers of America.
Case 9-CA-30654

November 5, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on May 4, 1993, the General Counsel of the National Labor Relations Board issued a complaint on June 18, 1993, against Sonya Trucking, Inc. d/b/a Sonya Trucking Company, the Respondent, alleging that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act. Subsequently, the Respondent filed an answer to the complaint asserting that it was without sufficient knowledge to admit or deny certain allegations, and admitting in part and denying in part other allegations in the complaint. Concurrent with its answer, the Respondent filed a motion to dismiss in which it asserted, *inter alia*, that the matter before the Board should be dismissed or, in the alternative, held in abeyance "in respect of the bankruptcy stay imposed by 11 U.S.C. 362."

On August 2, 1993, the General Counsel filed a Motion for Summary Judgment, memorandum in support of Motion for Summary Judgment, and memorandum in opposition to the Respondent's motion for dismissal. Thereafter, on August 10, 1993, the Board issued its order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. On August 24, 1993, Respondent filed a letter responding to the Notice to Show Cause.

**Rulings on the Motion for Summary Judgment
and Motion to Dismiss**

In its response to the Notice to Show Cause, the Respondent states that it has no defense which it can advance to certain allegations in the complaint with regard to its failure to abide by the terms of its collective-bargaining agreement with the Union. It further states that, although the Board is "entitled" to exercise jurisdiction over this proceeding despite the Respondent's bankruptcy filing, the Bankruptcy Court maintains exclusive jurisdiction to liquidate claims and determine amounts due and owing to "any individual entity," including the Union.

As recognized by the Respondent, the filing of a bankruptcy petition does not deprive the Board of its jurisdiction to address unfair labor practices. Moreover, it is well established that Board proceedings fall within the exception to the automatic stay provision of the Federal Bankruptcy Code for governmental entities enforcing police or regulatory powers. *E.g., Super Car-*

bide Tools, 307 NLRB 1052 fn. 1 (1992), and *Continental Hagen Corp.*, 306 NLRB No. 172 (Mar. 27, 1992) (not reported in Board volumes). Significantly, the Board may in such circumstances process an unfair labor practice case to its final disposition including determination of such monetary amounts as may be owed as a result of unfair labor practices.¹

Accordingly, we grant the General Counsel's Motion for Summary Judgment and deny the Respondent's motion to dismiss.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is engaged in the operation of a coal hauling service in Dorothy, West Virginia. During the 12 months preceding the issuance of the complaint, the Respondent, in conducting its operations, derived revenues in excess of \$50,000 for services provided to Tony's Branch Coal Company, a mining enterprise located within the State of West Virginia. During those 12 months, Tony's Branch Coal Company, in conducting its coal mining operations, sold and shipped from its West Virginia facilities goods valued in excess of \$50,000 directly to points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The employees of Respondent described in article IA of the District 17 Transportation Agreement, "The Agreement," constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since about January 2, 1991, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and, since that time, has been so recognized by the Respondent. This recognition has been embodied in the collective-bargaining agreement between the Respondent and the Union, the Agreement, which was effective from January 2, 1991, through February 1, 1993.

Since about November 4, 1992,² the Respondent has failed to continue in effect the terms and conditions of the Agreement by failing to remit to the Union union dues and other union assessments deducted from unit

¹ We note additionally that, to the extent the Respondent in its answer relies on its economic circumstances, the Board has long held that the inability to pay is not a defense to the allegation that Respondent has failed to make payments as required under the parties' collective-bargaining agreement. *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1064 (1973).

² All dates are in 1992 unless otherwise noted.

employees' paychecks under the terms of the union-dues checkoff and deduction provisions of the Agreement. Additionally, since November 4, the Respondent has failed to forward to the Union pension fund records reflecting the man-hours worked by employees for the purpose of computing contributions to be credited to their retirement accounts under the provisions of the Agreement. The Respondent has also failed, since about October 4, to continue in effect all the terms and conditions of the Agreement by failing to provide appropriate medical insurance and pay the medical expenses of unit employees. The terms and conditions of employment described above are mandatory subjects of bargaining, and the Respondent engaged in the conduct described above without the Union's consent.

CONCLUSIONS OF LAW

1. By unilaterally failing to remit to the Union union dues and other union assessments deducted from unit employees' paychecks under the terms of the Agreement, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

2. By failing to forward to the Union pension fund records reflecting the man-hours worked by employees for the purpose of computing contributions to be credited to their retirement accounts under the provisions of the Agreement, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

3. By failing to continue in effect the terms and conditions of the Agreement by failing to provide appropriate medical insurance to unit employees and pay their medical expenses, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order the Respondent to adhere to the collective-bargaining agreement by requiring the Respondent to remit to the Union union dues and other union assessments deducted from the unit employees' paychecks under the terms of the union-dues checkoff and deduction provisions of the Agreement that it unlawfully failed to remit since about November 4, 1992,³ with interest computed in the manner

³ We note in this regard that there is no statutory duty to deduct union dues under a contractual dues-checkoff procedure following the expiration of the collective-bargaining agreement. See *United States Can Co.*, 305 NLRB 1127, 1137 (1992), *Robbins Door &*

prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We further shall order the Respondent to restore the status quo ante in effect prior to the unilateral changes made in the employees' terms and conditions of employment. In this regard, we shall order the Respondent to forward to the Union pension fund records reflecting man-hours worked by unit employees for the purpose of computing contributions to be credited to their retirement accounts under the provisions of the Agreement and to furnish to the fund the contractually required records it failed to furnish in the past. We shall also order the Respondent to provide appropriate medical insurance and to pay the medical expenses of the employees in the unit and to make unit employees whole for any expenses they may have incurred because of the Respondent's failure and refusal to do so, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd. mem.* 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, *supra*.

ORDER

The National Labor Relations Board orders that the Respondent, Sonya Trucking, Inc. d/b/a Sonya Trucking Company, Dorothy, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Mine Workers of America, the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit by: unilaterally failing to continue in effect terms and conditions of the parties' collective-bargaining agreement by failing to remit to the Union union dues and other union assessments deducted from unit employees' paychecks under the terms of that agreement; failing to forward to the Union pension fund records reflecting man-hours worked by unit employees for the purpose of calculating contributions to be credited to their retirement accounts under the terms of the parties' collective-bargaining agreement; and failing to provide appropriate medical insurance and to pay the medical expenses of the employees in the unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union all union dues and other union assessments that it has failed to remit since November 4, 1992, with interest, as set forth in the remedy section of this decision.

(b) Forward to the Union pension fund records reflecting the man-hours worked by unit employees for

Sash Co., 260 NLRB 659 (1982), and *Bethlehem Steel Co.*, 136 NLRB 1500, 1502 (1962).

the purpose of calculating the contributions to be credited to their retirement accounts.

(c) Provide appropriate medical insurance to unit employees as set forth in the remedy section of this decision.

(d) Make the unit employees whole for medical expenses they may have incurred as set forth in the remedy section of this decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount due to the Union and unit members under the terms of this Order.

(f) Post at its facility in Dorothy, West Virginia, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT refuse to bargain with United Mine Workers of America, the exclusive collective-bargaining agent of our employees in an appropriate unit, by unilaterally failing to continue in effect terms and conditions of the collective-bargaining agreement by failing to remit to the Union union dues and other union assessments deducted from unit employees' paychecks under the terms of the agreement; by failing to forward to the Union pension fund records reflecting man-hours worked by unit employees for the purpose of calculating contributions to be credited to their retirement accounts under the terms of the agreement; and by failing to provide appropriate medical insurance and to pay the medical expenses of the employees in the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL remit to the Union all union dues and other union assessments, with interest, that we have failed to remit from about November 4, 1992.

WE WILL forward to the Union pension fund records reflecting man-hours worked by unit employees for the purpose of calculating contributions to be credited to their retirement accounts that we have failed to forward since about November 4, 1992.

WE WILL provide appropriate medical insurance for our employees and make the unit employees whole for any expenses incurred as a result of our failure to provide appropriate medical insurance, with interest.

SONYA TRUCKING, INC. D/B/A SONYA
TRUCKING COMPANY